

## REMARKS/ARGUMENTS

### **Status of Claims**

Claims 27-52 are pending in the application with claim 27 being the only independent claim. Claims 27 and 29 have been amended. Support for the amendment to the claims is found, for example, at paragraph [0045] of the published version of the present application (US 2007/0084887).

### **Overview of the Office Action**

Claims 27, 28, 31, 33 and 39, 34 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Nakamura (U.S. 4,961,516).

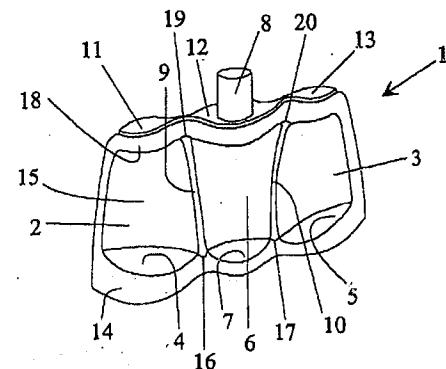
Claims 27-29 and 48-50 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bourque (U.S. 7,055,683) in view of Wieslander (U.S. 6,039,719) and Etesse (U.S. Pub. 2002/0166779).

Claims 40-47, 51 and 52 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bourque in view of Wieslander, Etesse, and Grabenskort (U.S. 4,936,445).

### **Summary of the Subject Matter Disclosed in the Specification**

The following descriptive details are based on the specification. They are provided only for the convenience of the Examiner as part of the discussion presented herein, and are not intended to argue limitations which are unclaimed.

The subject application relates to a bottle-like plastic container (1), as is shown in Fig. 1 reproduced herein. The container (1) has two chambers (2, 3) arranged side by side. Each of the chambers (2, 3) has a base part (4, 5), which results in a large, stable support surface for the container (1).



In one embodiment, a third chamber (6) is provided, which also has a base part (7), to separate the chambers (2, 3) with breakable seams (9, 10).

When the seams (9, 10) break, for example, by squeezing or pressing the container (1), the contents of the different chambers (2, 3, 6) mix. The mixed contents can be removed from the container (1) by a reclosable spout (8) in the third chamber (6).

The three chambers (2, 3, 6), which are arranged side by side here, are each closed at the top by a boat-shaped section (11-13) of a molded plastic part. The reclosable spout (8) can then also be formed together with them in a simple way. Moreover, the boat-shaped sections (11-13) can be provided with openings for filling the three chambers (2, 3, 6). After the chambers (2, 3, 6) have been filled--up to the spout--the openings are sealed.

See, paragraphs [0045] and [0046] of the published application (i.e., US 2007/0084887).

### **Patentability of the Claimed Invention**

#### Independent claim 27 is not taught by Nakamura

Independent claim 27 recites, at least, "first and second breakable seams separating said chambers."

The Office Action interprets the partitions or diaphragms 73, 74 in Nakamura as the claimed breakable seams (see, page 2 of the Office Action). Applicants disagree because Nakamura's partitions or diaphragms 73, 74 extend in both axial and lateral directions inside the columnar housing 2 and thus do not read on the "breakable seams" explicitly recited in independent claim 27.

Nakamura teaches a container 1 having a columnar housing 2 (see, col. 2, ll. 56-58 of Nakamura). The housing 2 is formed by a bellows barrel 21 joined to top and bottom housing walls. A partition 7 is provided to divide the interior of the columnar housing 2 into a plurality of compartments. In one example, the partition 7 is in the form of partitions or diaphragms 73, 74. The partition 7 is made of a material impermeable and chemically resistant to the solution in the

container 1. When the bellows barrel 21 expands, the partition 7 is subject to tension and consequently breaks to allow the plurality of compartments to communicate with one another.

Nakamura however does not teach that its compartments are separated by two breakable seams, as is recited in independent claim 27. In contrast, Nakamura employs partitions or diaphragms 7, 73, 74 to divide the interior of the columnar housing 2. As Nakamura's partitions or diaphragms 73, 74 extend in both axial and lateral directions to divide the interior of the columnar housing 2, such partitions or diaphragms 7, 73, 74 cannot be considered as the "seams." Therefore, Nakamura does not teach "first and second breakable seams separating said chambers," as recited in independent claim 27.

Accordingly, independent claim 27 patentably distinguishes over Nakamura.

Independent claim 27 is not obvious over Bourque in view of Wieslander and Etesse

Independent claim 27 recites "first and second breakable seams separating said chambers." The above recited features are not taught by Bourque, in view of Wieslander and Etesse, because none of these cited references employs two breakable seams to separate two chambers as are the "first and second breakable seams" recited in independent claim 27.

The Office Action finds that Bourque teaches a frangible seal 20 dividing the interior of the beverage container 10 into two separated compartments 22, 24. However, Bourque does not expressly disclose that the frangible seal 20 is a breakable seam. Moreover, even if the frangible seal 20 of Bourque is considered a breakable seam (which applicants do not believe to be true), there is not an additional breakable seam in Bourque, much less one separating the two compartments 22, 24. Therefore, Bourque does not teach two breakable seams separating the chambers 22, 24, as are the "first and second breakable seams" explicitly recited in independent claim 27.

Furthermore, the chambers of Bourque do not have respective base parts, as now expressly recited in independent claim 27.

Wieslander fails to teach or suggest what Bourque lacks. The Office Action states that Wieslander teaches three seams 41, 42, 43 (see page 3 of the Office Action). However, the seams 41, 42, 43 in Wieslander are not "breakable" seams as recited in independent claim 27. For example, in addition to a welding line 41 separating the compartments 8, 9, Wieslander expressly teaches that the compartments 8, 9 are communicated by a connection tube 17 with a breakable portion 18 (see, Figs. 1 and 2 and col. 3, ll. 11-14 and 36-40 of Wieslander). In addition, Wieslander also fails to teach or suggest that each chamber has a respective base part. Consequently, Wieslander does not cure Bourque's deficiencies.

Etesse also fails to teach what Bourque lacks. Rather, Etesse teaches a "permanent" seal 4 that is no more easily ruptured than the other seals around the perimeter of the side walls of the pouch (see, para. [0021] of Etesse).

Therefore, independent claim 27 patentably distinguishes over the cited references for at least the above reasons.

In fact, because neither Wieslander nor Etesse teach a "breakable" seam, one skilled in the art will not be motivated to look to the teachings in Wieslander or Etesse when contemplating the claimed invention. Therefore, independent claim 27 patentably distinguishes over the cited references for the above additional reasons.

In view of all the above, withdrawal of the claim rejections of independent claim 27 is respectfully requested.

#### Dependent Claims 28-52

Claims 28-52 depend, directly or indirectly, from allowable independent claim 27. Wieslander, Etesse, and Grabenskort are cited in the Office Action against the additional features in

certain dependent claims but do not remedy the deficiencies of Nakamura or Bourque. Therefore, claims 28-52 are each allowable for at least the same reasons that independent claim 27 is allowable.

In addition, dependent claims 28-52 each include features which serve to even more clearly distinguish the claimed invention over the applied prior art.

### **Conclusion**

Based on all of the above, the present application is now in proper condition for allowance. Prompt and favorable action to this effect and early passing of this application to issue are respectfully solicited. Should the Examiner have any comments, questions, suggestions or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

Respectfully submitted,  
COHEN PONTANI LIEBERMAN & PAVANE LLP

By /Alfred W. Froebrich/  
Alfred W. Froebrich  
Reg. No. 38,887  
551 Fifth Avenue, Suite 1210  
New York, New York 10176  
(212) 687-2770

Dated: May 20, 2009